REMARKS

Claims 7 and 8 have been amended to more definitely set forth the invention and obviate the rejections. Support for the amendment of claims 7 and 8 can be found in Figures 1-5, and 9-12 herein. The amendments to the claims made herein are deemed not to introduce new matter. Claims 7-19 are pending in the application, Claims 11, 13-15, 17 and 19 having been withdrawn from consideration as being directed to non-elected inventions.

In response to the Examiner's comments in the Advisory Action mailed herein on September 13, 2006, base claim 7 has been extensively amended to clearly distinguish from the cited Thayer reference. In particular, as now claimed herein in base claim 7, friction ridges are disposed at intervals around the entire length of the first and second straight portions of the inner perimeter of open-jawed mouth. In contrast, the device of Thayer has teeth or prongs disposed on only one arm of the cant hook, as clearly stated in his claims and illustrated in Figures 1-5 thereof, the other arm being smooth.

Further, with regards to the Examiner's comment in the Advisory Action mailed September 13, 2006, the Examiner has referred to the rejection of claim 7 herein as a "102 rejection". However, in the final Office Action mailed April 19, 2006, the rejection of base claim 7 herein as based on 35 U.S.C. 103(a). It is respectfully submitted that Thayer fails to anticipate base claim 7 herein, as recognized by the Examiner in the final Office Action mailed April 19, 2006, and that reference to 35 U.S.C. 102 was made in error. Acknowledgement of same is accordingly respectfully requested.

It was unexpectedly discovered that the fireplace tool of the present invention provides superior gripping power on objects when the friction ridges are spaced along the

entire length of the straight portions of the inner perimeter of the open-jawed mouth. Such superior gripping power cannot be achieved with a device as disclosed in Thayer, as the prongs 19 are disposed on only one arm of the cant hook. In fact, the Thayer device will not work as Thayer intended unless one arm of the cant hook is smooth (i.e., without "prongs" disposed thereon).

Another structurally distinguishing feature of Thayer's device is that the cant hook therein has the protruding prongs angled "in a direction toward the angle between the arms", so as to produce a biting action upon objects. In contrast, the friction ridges of the fireplace tool of the present invention produce a friction effect, not a biting effect, and cannot be directional to achieve both the frictional gripping effect and the ability to release a log desired herein. An important functional aspect of the fireplace tool of the present invention is the ability to release a log easily, which cannot be achieved if the inner perimeter of the open-jawed mouth is lined with protruding, angled prongs that bite into a log, as in Thayer. In fact, the functionality of Thayer's device appears to be dependent on the prongs protruding significantly and angled as he describes, unlike the fireplace tool of the present invention.

Further, Thayer fails to teach or suggest a spring-like effect produced by the cant hook therein, as is provided by the open-jawed mouth of the present invention when the open-jawed mouth is pushed onto a log. Thus, it is respectfully maintained that the spring effect and the ridges of the present invention, not taught or suggested by Thayer, are important elements or aspects of the fireplace tool of the present invention, as they allow a single user using a single fireplace tool to grip and lift a log vertically, without assistance. On the other hand, it is believed that the Thayer device requires at least 2

people, each using a separate tool, to lift a log or timber, and that a single user with a single Thayer tool can only turn a log, not lift it. Thayer in fact describes a primary use of his tool where 4 people, using 4 separate tools, lift and move a timber.

The present invention solves a long-felt unsolved need. In the year 2000, about 32 million homes in the US had functioning fireplaces, with about 800 thousand being added each year (data from the US Census Bureau and the National Association of Home Builders). Thus, there is a substantial commercial market for fireplace tools. It has long been recognized that conventional pokers are crude, inadequate devices, and numerous fireplace tools have been invented with the intent to provide the capability to grip, lift and manipulate a burning log in a fireplace (see IDS for this application). That such devices have been awkward to use and complex, with multiple moving parts, and have not found a commercial market indicates a failure of prior art devices.

None have recognized in Thayer the basis for a fireplace tool satisfying these needs with greatly reduced complexity, such as the present invention. The insight represented in this fireplace tool was not understood by the art, and it is believed that the results produced by its structure are unexpected by those skilled in the art. It, in fact, embodies a new principle of operation for fireplace tools, a principle not taught by Thayer.

The application is now believed to be in condition for allowance and early action and allowance thereof is accordingly respectfully requested. If there is any reason why the application cannot be allowed at the present time, it is respectfully requested that the Examiner call the undersigned at the number listed below to resolve any problems.

Respectfully yours,

TOWNSEND & BANTA

Donald E. Townsend, Jr.

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Date: October 16, 2006

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CERTIFICATE OF MAILING

I hereby certify that this Supplemental Amendment in Serial No. 10/829,080 filed April 22, 2004, was deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on October 16, 2006.

Donald E. Townsend, Jr.

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